AMERICAN BUS ASSOCIATION®
1100 New York Avenue, N.W. • Suite 1050 • Washington, D.C. 20005-3934
(202) 842-1645 • (800) 283-2877 • Fax: (202) 842-0850

May 10, 1996

FHWA-97-2277-11

RE: FHWA Docket No. MC-96-6

Please acknowledge receipt of these comments by stamping the attached copy and mailing it in the enclosed self-addressed, stamped envelope.

THANK YOU.

Elaine Wade

Elaine Wade
Government Relations

BEFORE THE

FEDERAL HIGHWAY ADMINISTRATION

CFR PARTS 382, 383, 390 AND 391

[FHWA Docket No. MC-96-6]

SAFETY PERFORMANCE HISTORY
OF NEW DRIVERS -- NOTICE
OF PROPOSED RULEMAKING

COMMENTS OF THE

AMERICAN BUS ASSOCIATION

These comments are filed on behalf of the American Bus Association (ABA) in response to the Notice of Proposed Rulemaking published in the Federal Register on March 14, 1996, (61 Fed. Reg. 10548).

ABA is the national trade association for the intercity bus industry. The Association has approximately 600 operator members all of whom are subject to the Federal Motor Carrier Safety Regulations. Members of the Association actively participate in public and private activities designed to improve motor vehicle and highway safety.

First, ABA commends the Federal Highway Administration for proposing regulations which specify minimum safety information that new and prospective employers must seek from former employers in the investigation of a driver's employment history.

This is a gap in motor carrier safety regulation that urgently needs to be closed. In general, ABA favors the proposed regulations but we have indicated the proposed regulations which should be strengthened or clarified. In submitting our suggestions, we have been mindful of two cardinal objectives: first, nothing should be permitted to impede or delay submission of the required information and, secondly, there should be no uncertainty in what the former employer is required to submit. Information required under the new rule must be clearly defined. It must be limited in scope to only applicable, factual information routinely gathered during a driver's period of employment.

I.

ACCIDENT HISTORY

Prior accident history is the best indicator of future accident involvement. Obtaining information only or accidents as defined in 49 CFR § 390.5 eliminates a substantial part, perhaps as much as 80 percent, of a driver's accident history. A given driver may have three or four accidents over a three-year period without any of them meeting the 49 CFR § 390.5 definition.

Motor carriers are required by 49 CFR § 390.15 (b)(2) to maintain for a period of one year an accident register which contains: "Copies of all accident reports required by State or other governmental entities or insurers." There is no reason why

these accident records or additional accident records on file should not be provided by former employers to prospective employers.

We do not agree with comments in the Notice of Proposed Rulemaking on the need to adopt a definition of "accident" consistent with that of the National Governors' Association definition. The additional records on accidents are in the carrier's possession; they are kept in the ordinary course of business; and their submission to a prospective employer would not impose a significant paperwork burden on the former employer.

II.

HOURS-OF-SERVICE INFORMATION

The proposed rule would require submission of the following information:

> (ii) any hours-of-service violations resulting in an out-of-service order being issued to the driver within the preceding three years.

The probability is that no violations would be reported under the proposed rule. Of the 25,843 bus driver/vehicle inspections reported in the fiscal 1995 MCSAP summary, only 3.4 percent resulted in bus drivers being placed out of service for all types of violations. It would not make sense to promulgate a regulation affecting only a handful of drivers.

FHWA might consider requiring carriers to keep a record of all 10, 15, and 70 hour violations that their drivers have had during the past three years. If such a requirement is not found to be unduly burdensome or intrusive it could be proposed as a separate rule.

III.

DRUG AND ALCOHOL VIOLATIONS

All that is now required of employers is that drivers who have engaged in conduct prohibited by the regulations on drug and alcohol misuse:

> . . . shall be advised by the employer of the resources available to the driver in evaluating and resolving problems associated with the misuse of alcohol and the use of controlled substances including the names, addresses and telephone numbers of substance abuse professionals and counseling and treatment programs.

Many motor carriers of passengers, probably a majority of them, terminate or do not hire drivers who have violated DOT's drug/alcohol regulations. Such carriers would not know whether a terminated driver sought the services of a substance abuse professional. The proposed regulations should require only that former employers report driver termination for violation of Part

382. Most of the discussion in the preamble of the proposed regulation dealing with "Failure to Undertake or Complete Drug or Alcohol Rehabilitation" is irrelevant.

IV.

DRIVER'S RIGHT TO REVIEW

As pointed out in the preamble to the proposed rule, a motor carrier must allow the applicant a "reasonable opportunity" to comment on the safety information obtained from a former employer but does not define "reasonable opportunity." In our opinion, the regulations should define "reasonable opportunity" as an opportunity during the application process for the applicant to indicate in writing whether he or she desires to review any responses received from former employers.

V.

PENALTY FOR FAILURE TO PROVIDE INFORMATION

Proposed new Section 382.413 (c) requires a prospective employer to make "a good faith effort" to obtain the required safety performance history but imposes no penalty on the former employer for failure to provide it. We believe it would be helpful if prospective employers were required to notify FHWA of any former employer's failure to comply with the safety performance history regulations.

VI.

CONCLUSION

For the reasons set forth above ABA favors adoption of the proposed regulations with the changes we have suggested.

Respectfully submitted,

Susan Perry
Senior Vice President
Government Relations
AMERICAN BUS ASSOCIATION
1100 New York Avenue, N.W.
Suite 1050
Washington, D.C. 20005
(202) 842-1645

DATED: May 10, 1996

DUE: May 13, 1996